

FILED 10 NOV 19 15 52 USC-DWM

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
MEDFORD DIVISION

MARK D. McQUEEN,

Petitioner,

Civil No. 10-893-CL

v.

REPORT AND
RECOMMENDATION

KLAMATH COUNTY,

Respondent.

CLARKE, Magistrate Judge.

Petitioner filed a petition under 28 U.S.C. sec. 2254 challenging a May 20, 2010 conviction and sentence for two counts of sex abuse. Amended Petition (#8).

By Order (#9) entered October 18, 2010, petitioner was

advised of the exhaustion of state remedies requirement in proceedings for habeas corpus relief, and allowed 30 days to show cause in writing why this proceeding should not be dismissed (without prejudice) on the ground that petitioner has not exhausted state remedies with respect to his claims. Petitioner was further advised that failure to show cause as directed in the court's order would result in the dismissal of this proceeding for failure to prosecute.

Petitioner has not responded to the court's order to show cause or requested an extension of time in which to do so. Accordingly, petitioner's Amended Petition (#8) should be denied without prejudice for the reasons set forth in the court's Order (#9) [failure to exhaust state remedies]. This proceeding should be dismissed for failure to prosecute.

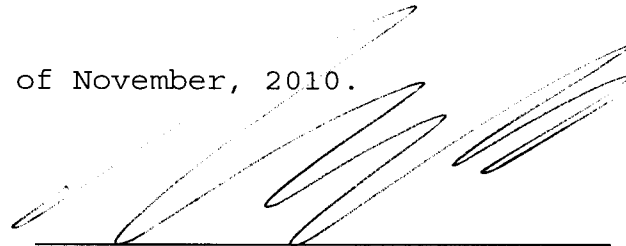
This recommendation is not an order that is immediately appealable to the Ninth Circuit Court of Appeals. Any notice of appeal pursuant to Rule 4(a)(1), Federal Rules of Appellate Procedure, should not be filed until entry of the district court's judgment or appealable order. The parties shall have fourteen (14) days from the date of service of a copy of this recommendation within which to file specific written objections with the court. Thereafter, the parties have

fourteen (14) days within which to file a response to the objections. Failure to timely file objections to any factual determinations of the Magistrate Judge will be considered a waiver of a party's right to de novo consideration of the factual issues and will constitute a waiver of a party's right to appellate review of the findings of fact in an order or judgment entered pursuant to the Magistrate Judge's recommendation.

Certificate of Appealability

Should petitioner appeal, a certificate of appealability should be denied as petitioner has not made a substantial showing of the denial of a constitutional right. See, 28 U.S.C. § 2253(c)(2).

DATED this 19 day of November, 2010.

A handwritten signature in black ink, appearing to read 'Mark D. Clarke', is written over a horizontal line.

Mark D. Clarke
United States Magistrate Judge